

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

NATIONAL NURSES ORGANIZING
COMMITTEE-TEXAS/NNU,
Respondent,

and

Case 16-CB-225123

ESTHER MARISSA ZAMORA,
Employee-Charging Party.

**CHARGING PARTY'S BRIEF IN SUPPORT OF EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

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INTRODUCTION AND SUMMARY

Pursuant to NLRB Rules & Regulations Section 102.46, Charging Party Esther Marissa Zamora (“Ms. Zamora” or “Charging Party”) files this separate brief in support of her exceptions to the Administrative Law Judge’s June 24, 2020 Decision.¹

This case concerns Ms. Zamora’s request for a copy of the “neutrality agreement” entered into between her employer, HCA Holdings, Inc. and its subsidiaries, and the certified union that purports to represent her interests, National Nurses Organizing Committee-Texas/NNU (referred to as “NNOC,” “Union,” or “Respondent”).

Neutrality agreements are enforceable contracts between unions and employers that target employees for unionization, often outside the Board’s representational processes.² While neutrality agreements generally cover the organizing campaign, they also include continuing, post-organizing obligations and concessions for future bargaining. These

¹ Charging Party fully supports the General Counsel’s positions, and adopts all Exceptions and arguments filed by the General Counsel, in addition to those set forth here.

² Neutrality agreements exist under various nomenclatures, sometimes called “organizing agreements,” “labor peace agreements,” “card check agreements,” “majority verification agreements,” “voluntary recognition agreements,” or “fair election procedures agreements” (depending on the level of Orwellian terminology one wishes to use). *See, e.g., “Neutrality Agreements” and the Destruction of Employees’ Section 7 Rights*, Engage, Vol. 6, Issue 1 (Federalist Soc’y, May 2005). Federal courts have enforced neutrality agreements against employers, despite various parties’ and employees’ objections. *See, e.g., HERE Local 57 v. Sage Hosp. Res., LLC*, 390 F.3d 206 (3d Cir. 2004); *Amalgamated Clothing & Textile Workers Union v. Facetglas, Inc.*, 845 F.2d 1250 (4th Cir. 1988) (neutrality agreement enforceable under NLRA Section 301); *HERE Local 217 v. J.P. Morgan Hotel*, 996 F.2d 561 (2d Cir. 1993) (upholding agreement preventing an employer from mounting a campaign); *HERE Local 2 v. Marriott Corp.*, 961 F.2d 1464 (9th Cir. 1992); *see also Adcock v. Freightliner LLC*, 550 F.3d 369, 371 (4th Cir. 2008) (employee challenge to a neutrality agreement dismissed); *but see Mulhall v. UNITE HERE Local 355*, 667 F.3d 1211 (11th Cir. 2012), *cert. dismissed as improvidently granted*, 571 U.S. 83 (2013).

obligations and concessions: (1) survive the organizing campaign; and (2) effect employees' working lives and terms and conditions of employment after the organizing campaign is completed. *See, e.g., Montague v. NLRB*, 698 F.3d 307, 309 (6th Cir. 2012) (neutrality agreement contained post-organizing "provisions related to health care benefits and future collective-bargaining agreements [] that are subject to further negotiation"); *Keener v. NNOC*, 2014 WL 1333195, at *2 (N.D. Ohio Mar. 31, 2014), *aff'd as modified*, 615 F. App'x 246 (6th Cir. 2015) (allegation that NNOC and employer entered into a secret organizing agreement containing pre-bargained terms and conditions of employment covering health and dental insurance, life insurance, retirement plans, substance abuse policies and other terms and conditions of employment affecting employees' future working lives); *Adcock v. Freightliner LLC*, 550 F.3d 369, 371 (4th Cir. 2008) (allegations that the neutrality agreement contained future bargaining concessions and limitations on what the union would demand once the organizing campaign succeeded).

In June 2018, Ms. Zamora attempted to exercise her NLRA Sections 7 and 9 rights to decertify NNOC. 29 U.S.C. §§ 157 & 159. She began passing out fliers and conducting in-service meetings to educate nurses about NNOC's flaws and the decertification process. Both NNOC and HCA stymied her efforts. This included NNOC agents repeatedly ripping down her fliers and HCA denying her access to post material on protected bulletin boards, where her material would be shielded from vandalism.

Sensing something amiss, Ms. Zamora made information requests both to NNOC and HCA for a copy of any neutrality agreement between them, to see whether such agreement had any effect on her legal rights to post fliers and conduct her decertification

campaign in the hospital. Indeed, based on media reports about NNOC's past secret deals, litigation in other cases related to NNOC's neutrality agreements, and direct conversations she had with HCA's human resources liaison to the NNOC, Michael Lamond, Ms. Zamora had every reason to believe such a neutrality agreement existed between NNOC and HCA, and that such agreement related directly to her working life and terms and conditions of employment—especially her desire to decertify NNOC under NLRA Section 9. Based in particular on conversations she held with HCA representative Lamond, Ms. Zamora had a reasonable belief that this neutrality agreement affected, if not controlled, how HCA could respond to her decertification efforts.

Both NNOC and HCA refused to give Ms. Zamora a copy of the neutrality agreement, and the evidence adduced at trial shows why: the agreement in fact existed, but it was a closely guarded secret between NNOC and HCA, to be kept strictly confidential from all employees and third parties. (GC Ex. 7 at 5). Throughout this case, NNOC has denied the existence of such an agreement, a denial proven at trial to be false. Indeed, NNOC's bald denial of Ms. Zamora's information request, (Jt. Exs. 3-4), was perfunctory and in bad faith, as the responding official, NNOC representative Bradley Van Waus, admitted he did not even bother to search for a neutrality agreement before denying her request.

Thus, Ms. Zamora filed this ULP charge against her fiduciary agent, NNOC, to challenge its studied and bad faith refusal to provide the requested contractual information. The General Counsel issued a Complaint on her behalf, but, after a two-day trial, the ALJ

went seriously off course and misapplied the law and facts to recommend dismissal of the Complaint.

In essence, the ALJ chided Ms. Zamora for seeking what he first called a non-existent agreement, because Ms. Zamora had never seen it. Then the ALJ found that such an agreement in fact existed, but opined that it did not control or affect her working life—even though *he* himself had never seen it, and had *no idea* what was in it! The ALJ never saw the neutrality agreement because he revoked two subpoenas issued to NNOC by the General Counsel and Ms. Zamora, and then refused to draw any negative inferences from HCA’s blatant refusal to comply with his order to produce the document *in camera* in response to Ms. Zamora’s subpoena. Throughout this case, NNOC cleverly, coyly, and misleadingly has denied the existence of the agreement, despite HCA’s admissions in GC Ex. 7 that the agreement existed and contained continuing provisions that affected how HCA could respond to a decertification effort.

In short, there is a peculiar “chicken and egg” twist to this case and to Ms. Zamora’s request for a copy of the neutrality agreement, based on NNOC’s and HCA’s denial of her requests and their conspiratorial hiding of the agreement. Because the neutrality agreement is explicitly kept “confidential” from employees, and the two contracting parties “do not provide copies of the agreement to employees or others,” (GC Ex. 7 at 5), Ms. Zamora had no way to know exactly what was in it. And, because Ms. Zamora had never seen the secret agreement and could not know its contents, the ALJ held she was speculating and making an improper request for information by asking for a copy. (ALJD 11:11). Having never personally seen the neutrality agreement (because he revoked or refused to enforce several

subpoenas), the ALJ's own findings of fact about the agreement's contents are purely speculative and unsupported by the record. The ALJ held Ms. Zamora to an impossible "chicken and egg" or Catch-22 standard. He dismissed this case because she could not prove the contents of a neutrality agreement that was deliberately kept hidden from her and hundreds of similarly-situated HCA employees. This is wrong and must be reversed.

STATEMENT OF FACTS

A. Background

Charging Party Marissa Zamora is a registered nurse working at Doctor's Regional Medical Center ("Doctor's Regional") in Corpus Christi, Texas. Doctor's Regional is one of five hospitals within a larger hospital system called Corpus Christi Medical Center, which itself is owned and controlled by HCA Holdings, Inc. or one of its affiliates. (These related employers collectively will be referred to as "HCA"). HCA is a national hospital chain that, directly or through its affiliates, owns and controls the operation of Doctor's Regional, Corpus Christi Medical Center, and many other hospitals around the nation. (TR 74-76). At one point in her career, Ms. Zamora served as a nurse manager/supervisor with HCA at Doctor's Regional, and she testified to her dealings with other HCA officials in the management and control of Doctor's Regional. (TR 74-75; 78-79; *see also* TR 104-05; GC Ex. 6).

Currently, Ms. Zamora works in a bargaining unit position at Doctor's Regional, and her unit of registered nurses is represented for purposes of collective bargaining by NNOC. Ms. Zamora has never been a member of NNOC and has vocally campaigned against that organization's representation. (TR 76-77).

B. Ms. Zamora Attempted to Post Fliers in the Exercise of Her Rights Under NLRA Sections 7 and 9.

In June 2018, Ms. Zamora started a campaign to decertify NNOC because its contract was nearing expiration. (TR 79). Doctor's Regional allows nurses to hold "in-service" programs to discuss educational and nursing issues among their co-workers. (TR 79-84). Ms. Zamora had to seek permission to hold her in-services on hospital property. (TR 84-85).

In furtherance of her campaign, Ms. Zamora "started posting [educational] fliers around June 11th [2018]" to advertise an in-service about decertifying the union approximately "a week before I was going to start the in-services." (TR 80; GC Ex. 3). Finding "all of the fliers had been removed," she "reposted them and then a third time later that week when I came back to work, of course, they were all gone again and I reposted." (TR 80). At one point, Ms. Zamora personally caught an NNOC representative taking down a flier announcing her in-service programs, which led the NNOC to settle a portion of Ms. Zamora's ULP case with a statement that it would no longer tear down employees' fliers that discussed decertification. (Jt. Ex. 8a).

In an attempt to keep her fliers protected from vandalism, Ms. Zamora sought permission to post them on a locked bulletin board in the hospital, where similar employee information was posted. (TR 79-9; GC Exs. 3-4). She "asked for permission from [HCA] administration and the secretary. As soon as [the secretary] found out it was union related, she had to deny me and referred me Michael Lamond," HCA's liaison to NNOC at the facility. (TR 81; GC Ex. 4). Ms. Zamora complained to HCA's labor representatives and

the hospital's union liaison about the removal of her fliers. She engaged in conversations and email exchanges with HCA representative Lamond and HR representative Vince Goodwine about her inability to protect her fliers from being torn down and to effectively campaign against NNOC's representation. (TR 78-90; GC Exs. 2-4; GC Ex. 5 (rejected)).

During one conversation Mr. Lamond informed Ms. Zamora that there existed a continuing neutrality agreement between HCA and NNOC that forbade HCA from supporting any decertification, to include not allowing her to post fliers on protected bulletin boards. (*See* TR 108, where Ms. Zamora testified that "[Lamond] said that there were certain aspects in the agreement that were not expired and that it continued and it could be part of my not getting my request because it states that the employer will not assist an employee or group of employees with any kind of antiunion activity.")).

HCA representatives Goodwine and Lamond denied Ms. Zamora's request for access to the protected bulletin board to post her fliers precisely because they related to anti-NNOC activity aimed at decertification. (TR 90-91; GC Ex. 2). Emails from the HCA representatives to Ms. Zamora state that she "cannot have a protected bulletin board because it would be facilitating antiunion support." (TR 91-92). Ms. Zamora told the HCA representatives that "[b]y not providing me with the same privileges [as NNOC gets], you are thereby facilitating pro-union support." (*Id.*) She also specifically asked the HCA officials that she be permitted to "see this [neutrality agreement] language in writing," and "formally request[ed] a copy of the Neutrality Agreement between HCA and NNOC at your earliest convenience." (TR 92). Neither HCA nor Doctor's Regional ever provided the neutrality agreement to Ms. Zamora, despite her request.

Understandably frustrated by her dealings with HCA, Ms. Zamora wrote to NNOC and its affiliates on July 11, 2018, (Jt. Ex. 3), asking for a copy of the neutrality agreement that HCA representative Mr. Lamond told her: (1) existed; (2) had portions that were continuing; and (3) affected how HCA could deal with her decertification efforts (and thereby affect her terms and conditions of employment and her statutory rights under NLRA Sections 7 and 9).³ As a consequence, Ms. Zamora had good and sufficient reason to request a copy of that neutrality agreement from NNOC because, *inter alia*, her discussions with Mr. Lamond made it clear the agreement existed, and it was impacting her decertification campaign, and thus, her working life and Sections 7 and 9 rights. *See generally Detroit Edison Co. v. NLRB*, 440 U.S. 301, 318-20 (1979) (discussing union interests to be weighed in information requests). Lastly, at trial Ms. Zamora testified forthrightly, was subject to virtually no cross-examination by NNOC, and was a credible witness at all times.

C. NNOC Denies the Existence and Continuing Nature of the Neutrality Agreement.

Throughout this case, NNOC has been cagey and evasive in denying the existence of any neutrality agreement. ALJ Amchan and ALJ Locke had to pry an answer out of NNOC about the mere existence of the agreement. (ALJD 4-6). In contrast to NNOC's evasiveness, HCA freely admitted a neutrality agreement exists, continues in effect, and

³ The Board can also take administrative/judicial notice of public documents revealing NNOC's penchant for signing neutrality agreements with employers. *See, e.g., Keener*, 2014 WL 1333195, at *2; Charging Party Exs. 1 & 2 (media reports about NNOC's neutrality agreements); Respondent Ex. 1 (Ms. Zamora's congressional testimony about neutrality agreements).

has always been kept secret from covered employees. HCA's attorney from the Ford Harrison law firm, Paul Beshears, readily admitted to Region 16 that such an agreement exists. (GC Ex. 7 at 4). Mr. Beshears confirmed to the Region that "the [neutrality] agreement provides that neither Corpus Christi Medical Center or HCA Holdings will encourage or support decertification. . . ." (*Id.*). He also admitted the agreement was secret and never shared with employees. (GC Ex. 7 at 5). Indeed, HCA refused to even allow an *in camera* inspection of the secret pact—apparently to protect its co-contracting party—despite a subpoena *duces tecum* and Judge Locke's order demanding production. (Jt. Ex. 7).

NNOC's denials as to the neutrality agreement, both to Ms. Zamora, (Jt. Ex. 4) and later to the Region and the ALJ, were not credible. Union agent Bradley Van Waus gave contradictory and evasive testimony. He initially denied that any neutrality agreement existed. Under extensive cross-examination, however, Van Waus finally admitted he had no reason to question the veracity of Mr. Beshears's admissions in GC Exhibit 7 that a neutrality agreement between NNOC and HCA existed. (TR 211:13).

Van Waus gave other testimony that was less than credible. Although Van Waus was a longtime union agent for both SEIU and NNOC, (TR 166 & 214), he claimed to be unsure of what a neutrality agreement is. (TR 178). When pressed, however, he testified that he did not consult with any NNOC superior to determine whether such an agreement existed with HCA, or how he should respond to Ms. Zamora's information request, before evasively denying the existence of such an agreement to her. (TR 183-85; 188-89; Jt. Ex.

4). Van Waus also admitted that he conducted no search for a neutrality agreement before denying Ms. Zamora’s information request. (TR 209).

ARGUMENT IN SUPPORT OF EXCEPTIONS

A. The ALJ Erred in Narrowly Construing NNOC’s Fiduciary Duties Towards Ms. Zamora and the Other Employees and in Finding No Violation in This Case. (Exceptions 1-4, 7, 16-19, 21, 22).

Unions owe all represented employees a fiduciary duty of fair representation. *Vaca v. Sipes*, 386 U.S. 171 (1967); *Teamsters Local No. 391 v. Terry*, 494 U.S. 558 (1990). This fiduciary duty gives employees “the right to be free from unfair or irrelevant or invidious treatment . . . in matters affecting their employment.” *Miranda Fuel Co.*, 140 NLRB 181 (1962). In fulfilling this duty, unions must respond to employees’ reasonable requests for information. *IATSE, Local 720 (Tropicana Las Vegas, Inc.)*, 363 NLRB No. 148 (Mar. 30, 2016) (employee had reasonable basis to request hiring hall records); *Piggly Wiggly Midwest*, 357 NLRB 2344, 2344 (2012) (applying reasonable belief standard to information request). An employee is entitled to information from his union representative when he establishes “a reasonable belief supported by objective evidence for requesting the information.” *Local One-L*, 352 NLRB 906 (2008); *IATSE Local 720 (Global Experience Specialists)*, 369 NLRB No. 34, n.3 (Feb. 28, 2020).⁴

⁴ In *IATSE Local 720*, 369 NLRB No. 34, n.3, the Board recently upheld the validity of an employee’s information request and stated that it wanted to reassess the narrow “reasonable belief” standard for such employee requests. This is an appropriate case for the Board to do just that, given the NNOC’s egregious conduct of entering into and hiding from Ms. Zamora and her fellow employees a secret agreement with their employer. Indeed, that secret agreement affected employees’ Sections 7 and 9 rights concerning how HCA employees were first unionized, and now is affecting Ms. Zamora’s parallel right to run a decertification campaign in her hospital. *See, e.g., Unions Enter Pacts to Boost Members*, Wall St. J., Jan. 29, 2011, stating:

A union breaches its fiduciary duty of fair representation and commits an unfair labor practice by failing to provide unit employees with copies of requested contracts and similar documents that touch on their employment. *Law Enf't & Sec. Officers Local 40B (S. Jersey Detective Agency)*, 260 NLRB 419 (1982); *Yellow Freight Sys.*, 327 NLRB 996 (1999); *Nat'l Ass'n of Letter Carriers (U.S. Postal Serv.)*, 330 NLRB 667 (2000). A union's duty of fair representation includes the obligation to provide employees with requested information pertaining to matters affecting their employment. *Branch 529, Nat'l Ass'n of Letter Carriers*, 319 NLRB 879, 881-82 (1995) (union breached its duty of fair representation by refusing to provide employee copies of her grievance forms); *Vanguard Tours, Inc.*, 300 NLRB 250, 265 (1990) (union violated NLRA Section 8(b)(1)(A) when union steward withheld the collective-bargaining agreement from unit employees).

For example, employees are entitled to all contract-related information so they can determine whether they have been fairly treated about their rights or terms and conditions of employment. *Branch 47, Nat'l Ass'n of Letter Carriers*, 330 NLRB 667, 668 (2000) (employee could not know whether he would file a grievance or a ULP charge until he had reviewed the overtime list and determined whether he had been incorrectly charged with

Two of the country's biggest health-care unions are working together to secure deals with hospital chains as part of a growing strategy to buck a trend of declining unionization. The Service Employees International Union and the California Nurses Association are signing so-called neutrality agreements with the chains, in which the hospitals don't object to organizing and the unions don't conduct negative campaigns against the employers or try to organize workers at certain hospitals. . . . Since April 2010, the SEIU and the CNA have organized roughly 10,000 nurses and other hospital workers at Nashville, Tenn.-based HCA Inc., one of the nation's biggest hospital chains. HCA agreed to let the unions organize workers at 20 hospitals in Florida, Texas, Missouri and Nevada without employer interference. . . .

overtime hours, or been treated disparately); *Law Enf't & Sec. Officers Local 40B*, 260 NLRB at 420 (employee could not know whether he was entitled to medical expense reimbursements until he reviewed the health and welfare plan); *Teamsters Local 385 (Walt Disney World Co.)*, 366 NLRB No. 96 (June 20, 2018) (employees seeking to revoke dues checkoffs could not know if and when any “window periods” existed without union providing copies of their checkoff authorizations). Here, Ms. Zamora could not know precisely *how* the HCA-NNOC neutrality agreement affected her right to post fliers and to conduct her decertification campaign, precisely because NNOC and HCA deliberately hid the agreement from her and others. (GC Ex. 7).

Despite the fiduciary duty unions owe to employees, it is not uncommon for them to enter into secret agreements with employers that compromise employee interests. *See, e.g., Merk v. Jewel Food Stores Div. of Jewel Cos.*, 945 F.2d 889 (7th Cir. 1991) (secret agreements violate federal labor policy); *Aguinaga v. United Food & Com. Workers*, 993 F.2d 1463 (10th Cir. 1993) (condemning a secret agreement between union and employer); *Lewis v. Tuscan Dairy Farms, Inc.*, 25 F.3d 1138 (2d Cir. 1984) (union breached its duty of fair representation by making secret agreement with employer not to enforce seniority rights of employees). Compromising employee rights is a fact of life under many neutrality agreements, where unions pre-bargain employment concessions to induce employers to grant recognition. *See, e.g., Montague*, 698 F.3d at 309 (neutrality agreement had post-organizing “provisions related to health care benefits and future collective-bargaining agreements [] that are subject to further negotiation” in the future); *Keener*, 2014 WL 1333195, at *2 (secret organizing agreement contained pre-bargained terms and conditions

of employment covering health and dental insurance, life insurance, retirement plans, and substance abuse policies affecting employees' working lives); *Adcock*, 550 F.3d at 371 (neutrality agreement contained future bargaining concessions and limitations on what the union would demand once the organizing campaign succeeded). *See also Int'l Ladies' Garment Workers Union v. NLRB*, 366 U.S. 731 (1961); *Majestic Weaving Co.*, 147 NLRB 859 (1964) (employer may not negotiate a contract with a union that has yet to achieve majority status). The NLRA cannot be used to allow unions to bargain away employees' future interests for the purpose of gaining representation rights in the short term.

Given NNOC's fiduciary duty and the many ways in which employees' rights and interests are compromised by secret labor agreements, the Board must reverse the ALJ and rule broadly that employees (the principal) are presumptively entitled to see *any and every contract* their union (the agent) makes or has made with their employer. *IATSE Local 720 (Global Experience)*, 369 NLRB No. 34, at n.3 (Board willing to reassess standards for information requests). This is because all such agreements necessarily affect employees' working lives, and the union has no countervailing reason for hiding them from the employees they purport to represent. *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 318-20 (1979).

Employees need this Board to issue a clear rule of law so they can see any and all contracts the Union has negotiated with their employer. In contrast, unions have no legitimate reasons to shield from scrutiny their deals with employers, and no expectation of privacy that such deals could be (or should be) kept secret from the employees they target. *Aguinaga*, 993 F.2d at 1470-71 ("The Union then deceived Plaintiffs by concealing

the side letters. As a result, Plaintiffs did not know that their rights had been sacrificed. . . Further, the Union’s attempts to conceal its activities from Plaintiffs support a finding of bad faith on the part of the Union.”); *Merk*, 945 F.2d at 894 (“serious evils would ensue from recognition of a secret side agreement negating the terms of the written collective bargaining contract”); *Lewis*, 25 F.3d at 1145 (“powerful condemnation of secret agreements”); *Bennett v. Local Union No. 66, Glass, Molders, Pottery, Plastics & Allied Workers Int’l Union*, 958 F.2d 1429, 1435 (7th Cir. 1992) (“We also reject the defendants’ attempt to characterize their conduct as the product of legitimate negotiations.”).

HCA officials—who *knew* that HCA had entered into such a secret agreement with NNOC, (GC Ex. 7)—told Ms. Zamora she could not post fliers advertising decertification meetings on any protected bulletin board *because* of the neutrality agreement’s restrictions on HCA’s involvement in decertification activities. (TR 108). Thus, Ms. Zamora had more than a reasonable basis for concluding that: (1) a neutrality agreement existed; and (2) the agreement impacted her dealings with her employer, the terms and conditions of her employment, and her Sections 7 and 9 rights. As such, she had a right to see the agreement, and her letter to NNOC dated July 11, 2018 was more than specific in asking for that document. In response, NNOC has been extremely evasive at every stage of this case, from the time it turned down Ms. Zamora’s information request, (Jt. Exs. 3-4), to the Answer and motions it filed, to the evasive and incredible testimony of Union representative Van Waus. Ms. Zamora needs the secret NNOC-HCA agreement precisely to see *how* it affects her terms and conditions of employment and her Sections 7 and 9 rights to decertify NNOC.

Thus, the Board should hold that represented employees have a legal right to see *all* agreements their union representative has entered into with their employer. The duty of fair representation requires as much, given that unions owe employees a *fiduciary* duty of good faith and fair dealing. *Teamsters, Local No. 391*, 494 U.S. at 569 (“the duty of fair representation issue is analogous to a claim against a trustee for breach of fiduciary duty”); *see generally Armstrong v. Republic Realty Mortg. Corp.*, 631 F.2d 1344, 1350 (8th Cir. 1980) (agent liable to principal for injuries caused by a secret agreement and disloyalty towards its principal). A union agent acting on behalf of employees-principals should not be able to bind itself to collusive agreements with the employees’ employer without the principals’ being made aware of the deal.

Here, should the Board not accept such a sweeping view of what unions (the ostensible agents) owe their principals (the employees), at the very least it should find, in accordance with the General Counsel’s Complaint, that Ms. Zamora had a more than reasonable basis to ask NNOC for the secret agreement with HCA, and that NNOC acted unlawfully and in bad faith when it responded in a perfunctory manner in denying her request for a copy of that agreement. The record shows that a neutrality agreement exists between NNOC (the employees’ fiduciary agent) and HCA, that Ms. Zamora had a reasonable basis to request that agreement, and that her letter requesting a copy of it was clear and unambiguous. Her letter to NNOC stated: “I am formally requesting a copy of the HCA/NNOC Neutrality Agreement that brought your union into our facility.” (ALJD 13:27-30). Any “ambiguity” in her letter was created by the ALJ, as the letter is clear on its face as to what she sought. (ALJD 14-15).

Contrary to the ALJ's speculation (ALJD 15), it is clear that Ms. Zamora was requesting the *entire* neutrality agreement, because she had no idea what was in any of it—precisely because the contents were NNOC's and HCA's closely guarded secret, and it was being withheld from her. Why would she be asking for only half of a secret agreement when she was unsure what was in any of it? Moreover, once NNOC directly and unequivocally denied Ms. Zamora's request, (Jt. Ex. 4), she had no requirement to jump through additional hoops, ask for the agreement again, or make some kind of "clarification" or "amendment" to her request. NNOC's "no" was clear, final, and legally erroneous.

In short, NNOC acted unlawfully in refusing to give Ms. Zamora a copy of its secret agreement, since HCA's representatives made it clear to her that their ability to deal with or respond to her decertification efforts was affected by the terms of that agreement. That proves more than an adequate relationship with employment conditions to require NNOC to turn the document over to Ms. Zamora. The ALJ erred in holding otherwise.

B. The ALJ Erred in Holding That the Complaint Did Not Allege the Existence of a Neutrality Agreement. The ALJ Also Erred in Finding That NNOC Provided an Adequate Answer or Denial to Complaint Paragraph 8. (Exceptions 8, 9, 19).

Contrary to the ALJ's findings, Paragraph 8 of the General Counsel's Amended Complaint is more than clear: it alleges the existence of a neutrality agreement. Paragraph 8(a) states: "Within the past six months, Respondent has refused to provide the Charging Party a copy of its neutrality agreement with the Employer, as requested on or about July 11, 2018." It is hard to imagine a less ambiguous allegation. True, the Complaint could

have read “Respondent has a neutrality agreement with HCA and has refused to provide the Charging Party a copy of it.” But this would be word games, as there is no substantive difference between the two formulations. The existence of the neutrality agreement is obviously implied in the Complaint, if not specifically pled. The ALJ was wrong to hold otherwise. (ALJD 5:19-30; 16:1-14). The ALJ also erred in finding that NNOC provided an adequate Answer or denial to Complaint Paragraph 8. (ALJD 6:1-3; ALJD 16:16-28).

On December 5, 2019, and January 29, 2020, NNOC filed its Answer to the Complaint, (GC Ex. 1(h)), and, respectively, its Amended Answer to the Complaint. (GC Ex. 1(m)). NNOC admitted the Complaint’s allegations concerning service of the charge, the Board’s jurisdiction over the Employer, the Union’s labor organization status, that Van Waus is Respondent’s labor representative and an agent under NLRA Section 2(13), that the at-issue bargaining unit of employees constitutes an appropriate unit for purposes of collective bargaining under NLRA Section 9(b), and that at all material times, by virtue of NLRA Section 9(a), Respondent has been the unit’s exclusive collective bargaining representative. (GC Ex. 1(m)).

In contrast, NNOC’s Amended Answer is cagey and coy regarding Complaint Paragraph 8, and does not deny the existence of a neutrality agreement with the Employer. Instead, Respondent parses legalities, stating “Respondent specifically denies that it failed or refused to provide Charging Party with a copy of a neutrality agreement with the Employer *that controls how the Employer can deal with her or has any effect on her working life with the Employer* as requested in the Charging Party’s July 11, 2018 letter to Respondent.” (GC Ex. 1(m), at ¶ 8, emphasis added). Given this carefully parsed response,

the ALJ was wrong to “conclude that the Respondent effectively has denied the allegations raised in paragraph 8 of the complaint, as amended.” (ALJD 6:1-3). NNOC’s Answer played word games; it should be deemed *not* to have denied the existence of a neutrality agreement between itself and HCA, which it thereafter failed to produce in response to Ms. Zamora’s information request. This is especially true in light of HCA’s admission that such an agreement exists, and that it concerns some of the employees’ terms and conditions of employment, e.g., how HCA can respond to decertification efforts against NNOC. (GC Ex. 7).

C. The ALJ Erred in Failing to Credit Ms. Zamora’s Testimony About What HCA Agent Michael Lamond Told Her Concerning the Neutrality Agreement. (Exceptions 10-15).

Contrary to the ALJ, Ms. Zamora testified credibly about Mr. Lamond’s statements to her, and there was no reason to discredit that testimony or discount Mr. Lamond’s statements as hearsay. (*See* ALJD 9:9–14; 10:5 to 10:33; TR 87-112, and in particular 98-99; 89:21-22; 107:20-22).

First, Mr. Lamond died prior to trial and, therefore, was obviously unavailable for trial. (TR 100). Contrary to the ALJ’s finding (ALJD 9:10-12), Mr. Lamond *was* HCA’s designated agent to deal with NNOC and its neutrality agreement. (TR 78-81; 86-108). Indeed, when Ms. Zamora complained about NNOC, HCA Vice President of Human Resources Vince Goodwine said “I’ll defer to Michael [Lamond] to resolve [your issues] with the NNOC.” (ALJD 8:43-46; *see also* ALJD 10:13-16). The record is clear that Mr. Lamond was HCA’s spokesman for dealing with the NNOC, and was its agent.

Second, Ms. Zamora had filed a parallel ULP charge against HCA and Corpus Christi Medical Center in Case 16-CA-225103, so she was HCA's party-opponent. As such, there are several hearsay exceptions that cover Ms. Zamora's testimony regarding Mr. Lamond's statements to her, and the ALJ had no valid reason for discounting or rejecting as hearsay that testimony, which concerned the existence and continuing effects of the neutrality agreement.

Third, contrary to the ALJ's findings, Ms. Zamora's testimony about Mr. Lamond's statements to her was clear. She testified unequivocally that Mr. Lamond told her the neutrality agreement was a reason why HCA was denying her requests to use the protected board.

Q. Do you recall anything that Mr. Lamond said specifically about this agreement, what you've been talking about, the second stage and the issue of decertification?

A. Yes, he said that there were certain aspects in the agreement that were not expired and that it continued that it could be part of my not getting my request [for bulletin board space] because it states that the employer will not assist an employee or group of employees with any kind of antiunion activity.

(TR 108). In addition to being clear and unambiguous, Ms. Zamora's testimony about what Mr. Lamond told her is credible, because it was corroborated by the position paper HCA gave to the General Counsel. (GC Ex. 7). That paper: (1) admits the existence of such an agreement, and (2) admits there are terms in the neutrality agreement that remain in effect and dictate how HCA will respond to employees' decertification efforts. That is precisely what Mr. Lamond told Ms. Zamora.

Fourth, Ms. Zamora’s testimony about Mr. Lamond’s statements satisfied several hearsay exceptions. His statements were “statements against interest” under Federal Rule of Evidence (“FRE”) 804(b)(3)(A), because he was an agent of HCA. He was unavailable to testify because he had passed away, satisfying the exception of FRE 804(a)(5)(B). Further, his statements were those of a party opponent under FRE 801(d)(2)(D) and (E) because Ms. Zamora had filed parallel ULP charges against HCA in Case 16-CA-225103, and HCA was essentially in collusion with its co-contracting party, Respondent NNOC. *See Gil Ramirez Grp., L.L.C. v. Houston Indep. Sch. Dist.*, No. 4:10-CV-04872, 2017 WL 3236110, at *15–16 (S.D. Tex. July 31, 2017), *aff’d sub nom. Gil Ramirez Grp., L.L.C. v. Marshall*, 765 F. App’x 970 (5th Cir. 2019); *Savarese v. Agriss*, 883 F.2d 1194, 1200-1201 (3d Cir. 1989) (statements made by authority’s chairman admissible as statements of a party opponent, even though he was deceased by time of trial).

Additionally, Mr. Lamond’s statements are admissible under the “residual” hearsay exception of FRE 807. Ms. Zamora’s testimony about Mr. Lamond’s statements to her is quite reliable, as demonstrated by HCA’s position paper to Region 16. That position paper, (GC Ex. 7), closely mirrors what Mr. Lamond is reported to have said about the neutrality agreement. *See, e.g., Goode v. United States*, 730 F. Supp. 2d 469, 474 (D. Md. 2010) (statement of a deceased witness given to an officer who was present at the scene found admissible under the FRE 807 residual hearsay exception for having equivalent circumstantial guarantees of trustworthiness); *Schering Corp. v. Pfizer Inc.*, 189 F.3d 218, 232-33 (2d Cir. 1999) (the more hearsay exceptions are satisfied, the more likely the

residual hearsay exception applies); *United States v. Workman*, 860 F.2d 140, 144 (4th Cir. 1998) (deceased declarant’s statement admissible under the residual exception).

Finally, hearsay is admissible if it is being used to establish a party’s reasonable belief. *See, e.g., Local One-L*, 2008 WL 294564, at *16 & n.10 (NLRB ALJD Jan. 29, 2008) (“To the extent that the information relied upon by the Association was derived from what was characterized by Respondent as ‘hearsay’ sources, the Board has made clear that such evidence can be considered in establishing ‘reasonable belief.’”); *Dodger Theatricals Holdings, Inc.*, 2006 WL 839167 (NLRB Mar. 28, 2006) (“it is well settled by Board precedent, supported by the Courts, that a Union’s ‘reasonable belief’ may be established by ‘hearsay evidence.’”) (citations omitted); *CFE Racing Prod., Inc. v. BMF Wheels, Inc.*, 793 F.3d 571, 589 (6th Cir. 2015) (testimony was not offered for “the truth of the matter asserted,” FRE 801(c), but rather was “probative” of other issues involved in the case . . . (citing Fed.R.Evid. 803(3)). Ms. Zamora’s conversations with Mr. Lamond—specifically his statements indicating the neutrality agreement was a factor preventing her from using a protected bulletin board (TR 108)—was the basis for establishing her reasonable belief in requesting the neutrality agreement from NNOC. In short, the ALJ should have accepted Ms. Zamora’s testimony regarding Mr. Lamond’s statements.

D. The ALJ Erred in Questioning Ms. Zamora’s Motivations and Alleged Biases. (Exceptions 11-12, 14-15).

The ALJ erred in questioning Ms. Zamora’s motivations and alleged biases in making her information request, and his credibility determinations regarding her testimony were erroneous. (ALJD 9:16 to 10:11). The ALJ erred in examining, and reflecting

negatively upon, Ms. Zamora's past experience with neutrality agreements, and in speculating upon her "ulterior motives" in bringing this case, to include her alleged "axes to grind," and her allegedly "seeking to set a precedent for the principle that a union has a duty to disclose neutrality agreements to bargaining unit employees." (ALJD 10:35 to 11:14). Nothing in the record supports this, as shown by the fact that NNOC barely cross-examined her. (TR 112-16). The ALJ also erred in his statement that Ms. Zamora's testimony lacked "impartiality," as though a litigant should be "impartial" about the case she filed to remedy a violation of her rights. (ALJD 12:32).

An information request is not some kind of psychological purity test. It was wrong for the ALJ to psychoanalyze Ms. Zamora in an effort to unearth her alleged "motivations" in making her request for the neutrality agreement. If requested information is relevant to an employee and her working life or her relationship with the union, the request is valid and the inquiry should end.

For example, suppose an employee is running against the incumbent local union president in a union election. If that employee asks the union for her grievance and disciplinary file to ensure the union is fulfilling its responsibilities, is there a reason to question her "ulterior motives" in making the request based on the unconfirmed *possibility* she would use the information in her election campaign to embarrass the union president? The requested information is either relevant or it is not. It is not up to the opposition or the ALJ to test the sincerity, bona fides, or motivations of the requestor.

Similarly, seeking to create a new legal precedent does not make an employee's motives suspect, and the ALJ was wrong to state otherwise, even assuming, *arguendo*, Ms.

Zamora was interested in a new legal precedent. (ALJD 11:1-14). Indeed, if the ALJ was correct to criticize Ms. Zamora's alleged "ulterior motives," then Mr. Steele should be criticized for filing *Steele v. Louisville & N.R.R. Co.*, 323 U.S. 192 (1944), to rid his workplace of racial discrimination, and Mr. Sipes should be criticized for initiating *Vaca v. Sipes*, 386 U.S. 171 (1967), to create a new precedent expanding the duty of fair representation for all employees.

Neither unions nor employers have grounds to deny a request for facially relevant information, even if the requestor might use the information to embarrass them. In *IATSE Local 720 (Global Experience)*, 369 NLRB No. 34, at *10-12, the ALJ and the Board rejected a union's claim that it did not have to respond to an otherwise valid information request due to the employee's bad faith history of litigiousness and belligerence against the union. In this same vein, the ALJ was wrong to speculate and delve into Ms. Zamora's alleged ulterior motivations. Her request for information about the HCA-NNOC neutrality agreement was reasonable and well-supported. The inquiry should have ended there.

The ALJ also erred in speculating, misinterpreting, and then finding that "Zamora thus appears to be claiming that the Employer was treating *individual nurses* in two different ways, depending on their support for or opposition to the Union." (ALJD at 12:9-10; 12:9 to 12:44). This misconstrues Ms. Zamora's testimony. She discussed her need to post material on protected bulletin boards to counter the Employer's favoritism to the pro-NNOC point of view *in general*, and to NNOC *as a body*, not to claim that *individual* pro-union nurses had been shown favoritism over her to post their own message. The ALJ completely misconstrued this testimony to make it appear Ms. Zamora was advancing a

claim that she was being discriminated against vis-a-vis individual pro-union employees. That, however, was not her claim, and she never said anything of the kind. (TR 147-48).

Finally, the ALJ erred in speculating and then finding that “Respondent’s right to post notices on a locked bulletin board was not a condition of employment of any bargaining unit employee, and it was not a right established by a secret agreement.” (ALJD 13:1-3). The ALJ could not have had any knowledge of this, or made findings of fact about what “was established in a secret agreement” because he: (1) never saw the secret agreement; (2) did not demand that NNOC produce it, even *in camera*; and (3) did not issue any sanctions after NNOC’s co-contracting party, HCA, refused to follow the ALJ’s order to produce a copy *in camera*. (Jt. Ex. 7). Thus, all of his statements about what was in, or not in, the secret agreement are pure speculation, completely unsupported in this record.

E. The ALJ Erred in His Handling of the Subpoenas served on NNOC and HCA Seeking the Secret Neutrality Agreement. (Exceptions 19-20).

The ALJ had great difficulty dealing with the subpoenas and the petitions to revoke (*see, e.g.*, ALJD 19-20), and he ultimately dealt with them erroneously.

First, the ALJ erred in revoking the subpoenas *duces tecum* Ms. Zamora and the General Counsel served on NNOC. Documents sought by a subpoena should normally be produced if they relate to any matter in question, or if they provide background information or lead to other evidence potentially relevant to an allegation in the complaint. *See* NLRB Rules & Regulations, § 102.31(b); *McDonald’s USA, LLC*, 363 NLRB No. 144, at 15 (Mar. 17, 2016); and *Perdue Farms v. NLRB*, 144 F.3d 830, 833–34 (D.C. Cir. 1998)

(information must be “reasonably relevant”). Here, given (1) NNOC’s coy and evasive denials throughout this case that any neutrality agreement existed, and (2) HCA’s admissions that a neutrality agreement did exist, (GC Ex. 7), Ms. Zamora’s and the General Counsel’s subpoenas to NNOC sought not only “relevant” information, but the *only* critical and relevant information in the case. The ALJ should not have revoked those subpoenas.

Second, given the unique posture of this case and NNOC’s evasive denials, the ALJ was wrong to rely on *Electrical Energy Services, Inc.*, 288 NLRB 925 (1988), as a reason to revoke the subpoenas. *Electrical Energy* was an ALJ decision the Board adopted without additional opinion or analysis, and that ALJ’s analysis of the subpoena issue was cursory. Here, ALJ Locke recognized that *Electrical Energy* is not squarely on point (ALJD 20:10-14), but still relied on it to revoke the subpoenas. This was wrong. While it may be true that in some cases it would be an “abuse” for the General Counsel to subpoena the very documents sought in the information request, 288 NLRB at 931, the employer in *Electrical Energy* was not denying the existence of the documents being sought, unlike NNOC’s conduct here. Indeed, the need for the subpoena is far greater here due to NNOC’s cagey and less than honest denials.

Moreover, it was Ms. Zamora, not the General Counsel, who issued the first subpoena to NNOC, because of her pressing need for the document that NNOC denied possessing. So, *Electrical Energy* is distinguishable on that basis as well. The ALJ wrestled with the subpoena issue, (ALJD 19-21), but failed to recognize the main difference between this case and *Electrical Energy*: far from being an “abuse” of the subpoena power to try to force disclosure of the same document that was sought in the underlying information

request, the subpoenas here were necessary *because* of NNOC's own unclean hands and dishonest denials about the neutrality agreement's existence. At the very least, the ALJ should have ordered NNOC to provide him with a copy for an *in camera* inspection, and then issued sanctions against it if it refused to comply.

Third, the ALJ erred when he refused to issue sanctions against NNOC over the refusal of its co-contracting party, HCA, to provide him with a copy of the neutrality agreement for an *in camera* inspection. (ALJD 20-21; Jt. Ex. 7). After HCA refused to comply with his order for an *in camera* inspection, (Jt. Ex. 7), the ALJ stated that "it would not be proper to draw an adverse inference, binding on [NNOC], when [NNOC] was not the party served with the subpoena and did not refuse to comply with it." However, this ignores the fact that NNOC is at least partially responsible for HCA's withholding of the neutrality agreement, since, as a matter of contract, the agreement "is confidential and HCA Holdings and . . . [NNOC did] not provide copies of the agreement to employees and others." (GC Ex. 7, at 5; *see also* Jt. Ex. 7; ALJD 21:10-20). Presumably, NNOC could have sued HCA for breach of contract had it complied with the ALJ's order and produced the secret agreement, so it should not be able to profit from its own legal machinations, which have kept the agreement secret and confidential from Ms. Zamora and the other targeted employees. The Board may impose a variety of sanctions to deal with subpoena noncompliance, *McAllister Towing & Transportation Co.*, 341 NLRB 394 (2004), and such sanctions should be applied in a flexible fashion given the unique circumstances of this case, and the cozy contractual relationship between NNOC and HCA. The ALJ was wrong to hold otherwise, as he handled (or mishandled) the subpoena disputes.

F. The ALJ Erred in Failing to Make Negative Credibility Findings (or Any Credibility Findings) About Union Agent Bradley Van Waus, Who Was Evasive and Uncooperative Throughout. (Exception 1, 19).

NNOC's only witness, Bradley Van Waus, was the sole NNOC official responsible for responding to Ms. Zamora's information request. As with his negative response to Ms. Zamora's request, (Jt. Ex. 4), Van Waus was evasive and uncooperative in his testimony, yet the ALJ made no findings or negative inferences concerning his evasions. As noted above, NNOC's denials, both to Ms. Zamora and later to the Region and the ALJ, were not credible. Union agent Van Waus gave cagey, contradictory, and evasive testimony, which the ALJ ignored.

First, Van Waus denied any neutrality agreement existed. (TR 178-80). But, under extensive cross-examination, Van Waus eventually admitted he had no reason to question the veracity of HCA attorney Beshears's admissions in GC Exhibit 7 that a neutrality agreement existed between NNOC and HCA. (TR 211:13).

Van Waus gave other testimony that was less than credible. He was a longtime union agent for both SEIU and NNOC (TR 166; 214), yet claimed to be unsure of what a neutrality agreement is. (TR 178). When pressed further, however, he testified that he did not consult with any NNOC superior to determine whether such an agreement existed, or how he should respond to Ms. Zamora's information request prior to evasively denying the existence of such an agreement. (TR 183-85; 188-89; Jt. Ex. 4). Van Waus also admitted that he never searched for a neutrality agreement when he was responding to Ms. Zamora's information request. (TR 209).

Van Waus's testimony about the denial letter he sent to Ms. Zamora, (Jt. Ex. 4), proves NNOC was acting in bad faith when it responded to her request. NNOC has a duty to deal fairly and honestly with employees. It may not intentionally mislead or misinform a represented employee. *See, e.g., Local 417, UAW (Falcon Indus., Inc.)*, 245 NLRB 527 (1980). Van Waus claimed that upon receiving Ms. Zamora's letter he "had no idea" what she was requesting. (TR 178:1). Despite working for years as a high official in the labor movement, Van Waus claimed he was unsure of what a neutrality agreement is. (TR 178). And then, despite the fact that he had "no idea" what Ms. Zamora was asking for, and that he was unsure of what a neutrality agreement is, he did not consult with any NNOC superior to determine whether such an agreement existed, or how he should respond to Ms. Zamora's information request. (TR 183-85; 188-89; Jt. Ex. 4). Van Waus also admitted he never searched for a neutrality agreement when responding to Ms. Zamora's information request. (TR 209). This testimony is the hallmark of a bad faith response. Van Waus admitted he did not search for any agreement, did not understand what the agreement was, or what it possibly could have been. Yet, he confidently asserted in his letter to Ms. Zamora that no such agreement existed. (Jt. Ex. 4). In short, the ALJ was wrong to ignore these inconsistencies and evasions, and to fail to make negative findings about Van Waus's credibility (or lack thereof).

Finally, the General Counsel was correct to amend the Complaint to add a claim of bad faith against NNOC based largely on this evasive testimony and denial of the information request, and that amendment should be sustained.

G. The ALJ Erred in Describing the General Counsel's Amendment to Complaint Paragraph 8(b). (Exception 6).

This exception is made to correct an obvious typographical error in the ALJD at 4:6-9 concerning the date on which Ms. Zamora sent NNOC her information request. The ALJD states that: "On or about July 25, 2018, Respondent, by its agent Bradley Van Waus, responded to the Charging Party's July 22, 3028 [sic] request in a manner that was arbitrary and/or in bad faith." (ALJD 4:6-9). The General Counsel's amendment actually states: "On or about July 25th, 2018, Respondent, by its Agent, Bradley Van Waus, responded to the Charging Party's July 11th, 2018 request for information, in a manner that was arbitrary and/or in bad faith." (TR 222:24 to 223:3).

H. The ALJ Erred in Refusing to Rule on Ms. Zamora's Motion to Strike Portions of the Union's Answer and Affirmative Defenses. (Exception 5).

The ALJ erred in refusing to rule on Ms. Zamora's Motion to Strike Portions of the Union's Answer and Affirmative Defenses, concluding that such a ruling was unnecessary because the Complaint should be dismissed, and that granting or denying Ms. Zamora's motion would not affect the outcome of the case. (ALJD 2:38-44). That ruling might be correct if the Board sustains the ALJ and orders the Complaint dismissed. However, the Union's Answer and Affirmative Defenses raised a host of irrelevant and scurrilous attacks on the General Counsel and others for allegedly participating in an unlawful conspiracy against it. NNOC's Answers to a simple, single issue Complaint has mocked this entire process, and ALJ Amchan properly granted the General Counsel's Motion to Strike those allegations. (ALJD 2). On the other hand, should the General Counsel's Complaint be found to have merit, Ms. Zamora's Motion to Strike should have been addressed.

Not content to impugn the character of the General Counsel, NNOC's Answers also impugned Ms. Zamora's integrity by calling her a shill or agent of an outside, not-for-profit, charitable organization, and casting aspersions on that charitable organization. NNOC apparently wishes to hijack this case—which raises a simple legal issue regarding its disclosure obligations, if any—to engage in an irrelevant examination about Ms. Zamora's and the General Counsel's motives, as well as those of the not-for-profit charitable organization that employs her retained counsel. Given this background, the ALJ should have granted Ms. Zamora's Motion to Strike NNOC's Answer and Affirmative Defenses, and not swept it under the rug.⁵ This is especially true since at the hearing NNOC put on not a shred of evidence to support any of its wild allegations.

⁵ In its Answer, NNOC asserts some ill-motive on the part of an organization called the National Right to Work Committee. That organization has utterly no connection to this case. A totally separate charitable organization, the National Right to Work Legal Defense Foundation, Inc. ("NRTWLDF"), is providing free legal aid to Ms. Zamora through the staff attorneys it employs. The NRTWLDF is a charitable, bona fide, IRS-approved, legal aid organization engaged in legitimate legal aid work. *See, e.g., United Auto Workers v. Nat'l Right to Work Legal Def. Found., Inc.*, 584 F. Supp. 1219, 1223-24 (D.D.C. 1984), *aff'd*, 781 F.2d 928, 934-35 (D.C. Cir. 1986); *Nat'l Right to Work Legal Def. & Educ. Found., Inc. v. United States*, 487 F. Supp. 801, 808 (E.D.N.C. 1979). Despite NNOC's conspiratorial insinuations to the contrary and to its apparent chagrin, NRTWLDF staff attorneys have successfully litigated a host of precedential cases such as *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), *Communications Workers v. Beck*, 487 U.S. 735 (1988) and *Kent Hospital*, 367 NLRB No. 94 (Mar 1, 2019). And, in any event, NNOC's misdirection about the NRTWLDF is 100% irrelevant because that organization has nothing to do with the relevant facts of this case.

CONCLUSION

The General Counsel's Amended Complaint is meritorious in all respects, and the Board should find that NNOC violated the Act precisely as alleged. These exceptions and the General Counsel's exceptions should be granted, and the ALJ reversed.

Respectfully submitted,

s/ Glenn M. Taubman

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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2020, a true and correct copy of the foregoing Charging Party's Brief in Support of Exceptions was filed with the NLRB Executive Secretary using the NLRB e-filing system, and was also served via e-mail on that same date to:

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